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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.349 OF 2006

Himanshu Shantilal Valia
and Anr. ...Petitioners.

Versus

Roopkumar Balchand Rohra
and Ors. ...Respondents.

...
ALONGWITH

WRIT PETITION NO.350 OF 2006

Niranjana S. Valia
and Anr. ...Petitioners.

Versus

Manoj A. Talreja & Ors. ...Respondents

...
ALONGWITH

WRIT PETITION NO.351 OF 2006

Niranjana S. Valia
and Anr. ...Petitioners.

Versus

Mahesh a. Talreja & Ors. ...Respondents.

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Ms.Nita Solanki for the Petitioners.
Ms.Kavita Lalwani for Respondent No.1
Shri K. Shaikh i/b W.I.Shaikh for Respondent No.5.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 8th FEBRUARY, 2006.

P.C. :

1. These Petitions under Article 227 of the Constitution of India involved common questions and can be conveniently disposed of by a common order.

2. The petitioners aggrieved by orders passed by the Trial Court in Summons for Judgments taken out in

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Summary Suits filed against partnership firms as well as them to claim amounts due and payable under certain Bills of Exchange, question the direction of the Trial Court as far as they are concerned to deposit a sum of Rs.25,000/- failing which further consequences under Order XXXVII of the Code of Civil Procedure would follow.

3. Ms.Solanki - learned Counsel appears for the petitioners, who are defendant Nos.4 & 6 in the Summary Suits which have been filed by original plaintiff (respondent No.1 before me.)

4. According to Ms.Solanki presence of other parties is not necessary for disposal of these Petitions. Service on them is, therefore, dispensed with.

5. As stated above, the original plaintiff invoked the jurisdiction of the Trial Court under Order XXXVII of the Civil Procedure Code, 1908 to recover sums under the Bills of Exchange from the drawers and exchequers thereof. It is alleged in the plaint that the partnership firms in question have accepted the liability to pay the amount of Bills of Exchange which have been drawn by another firm. The same have been endorsed in favour of respondent No.1-original plaintiff and under the scheme of the Negotiable

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Instruments Act, 1881 he is entitled to recover the sum thereunder. On such suits and proceedings being clearly contemplated under the Summary provisions the instant summary suit was filed. After the Suit was filed and copy of the plaint and proceedings served, the petitioners herein entered appearance. Thereupon, Summons for Judgment was taken out.

6. According to the scheme of the Code of Civil Procedure and more particularly Summary procedure envisaged therein, it is for the defendant to apply for leave to defend by filing affidavit. Accordingly, the petitioners placed their affidavit on record. They denied their liability to pay the amounts under the Bills in question. The affidavit which is filed on their behalf points out that the Bills have not been signed or drawn or executed on behalf of defendant No.1. The handwriting on the Bill of Exchange is not that of the petitioner No.1 (original defendant No.3) in Writ Petition No.350 of 2006. The said Bill of Exchange was mis-used by filling-in blanks after the same was procured from Mr.Rasiklal Valia, who is the uncle of defendant No.3. The names have been entered in collusion with Mohanlal H. Gaba a broker. However, there are several alterations in Bills. They are forged and fabricated.

7. It is also contended that the firms in question have been dissolved under diverse dissolution deeds. The business has closed. In the affidavit, a specific contention was raised that defendant No.3 has retired from the firm w.e.f. 31st March, 2000 and the firm stood dissolved under a deed, copy of which annexed to the affidavit-in-reply. In these circumstances, the liability to pay amounts under the Bill of Exchange drawn in the year, 2002 is disputed.

8. The trial Court after hearing the plaintiff and Advocates appearing for other defendants has passed an order directing petitioners to deposit sums (Rs.20,000/Rs.25,000/-). It appears that the trial Court has proceeded on the footing that the version of the defendants (petitioners before me) is more or less identical. In the order under challenge, the trial Court has observed that the deeds of dissolution may have been placed on record but since there is non-compliance with the provisions of Section 63 of the Indian Partnership Act, 1932, no cognizance can be taken of the said deed. Further, it is observed by the trial Court that the signature is admitted on the Bill of Exchange. The plea that consideration has not passed has also repelled by relying upon Section 118 of the Negotiable Instruments Act. As far as signatures being forged are concerned, the trial Court observes that the signatures on the Bills of Exchange and the

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affidavits are not shown to be distinct and neither are the petitioners ready for verification of the signatures by handwriting expert. For all these reasons, the order granting conditional leave to the petitioners has been passed. The reasoning appears to be identical in Summons for Judgment No.370 of 2005 as well. With regard to Summons for Judgment No.413 of 2005, the learned Judge has observed that the petitioners have not been able to produce the original deed of retirement as far as defendant No.5. The deed was admittedly signed by defendant No.5 and sent to other firms. But, formalities of Section 63 have not been complied. The learned Judge has proceeded to compare the disputed signatures on the Bill of Exchange with the admitted signature on the affidavit-in-reply.

9. The trial Court has, therefore, imposed condition on the petitioners who are original defendant Nos.3,4,6 & 7. After having perused the plaint and the affidavit-in-reply as also the annexures thereto, in my view, considering the settled principles which have to be applied while deciding an application for leave to defend, the trial Court was in obvious error in rejecting the pleas of the petitioners herein. It is not as if the petitioners have to substantiate their pleas by producing the entire evidence at the stage of hearing of Summons for Judgment. The principles are well settled. They are set out in the case reported in

AIR 1977, S.C., 577 :6: and followed till date. The Hon'ble Supreme Court observes that when there is a plausible case made out also it is not as if the Court must impose condition of deposit of money on the defendants while granting leave to defend. In the present case, substantial pleas necessitating evidence being led, have been raised by the petitioners herein. Pleas such as material alterations in the Bills of Exchange, the signatures thereon being forged and fabricated and there being no liability to pay because of deeds of dissolutions between the partners are not such which could be discarded as frivolous and vexatious. These are pleas which necessitate grant of unconditional leave to the petitioners to defend the Suits.

10. Once such pleas are raised, ordinarily no conditions should be attached pertaining to deposit of monies. More so, in the present case when the Court has proceeded to compare signatures at the stage of hearing of a Summons for Judgment. If such a process has to be resorted to then it is apparent that the parties deserve unconditional leave to defend.

11. The Court below has ignored the materials produced and the orders under challenge are vitiated by an error apparent on the face of record. This is a fit case for exercise of jurisdiction under under Article

227 of the Constitution of India.

12. In the result, Rule is made absolute in all these Petitions in terms of Prayer Clause "(a)". The petitioners are entitled to unconditional leave to defend in said Summary Suits. However, they shall file the Written Statement within a period of six weeks from today. Petitions allowed.

(S.C.DHARMADHIKARI,J.)